

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                             |   |              |
|-----------------------------|---|--------------|
| NARAYAN DODDAPANENI, Ph.D., | : |              |
|                             | : |              |
| Plaintiff,                  | : | CIVIL ACTION |
|                             | : | NO. 99-3105  |
| v.                          | : |              |
|                             | : |              |
| EXIDE CORPORATION           | : |              |
|                             | : |              |
| Defendant.                  | : |              |

**MEMORANDUM**

BUCKWALTER, J.

January 4, 2000

Presently before the Court is the Plaintiff's Motion to Dismiss Defendant's Counterclaim. For the reasons stated below, the Motion is granted.

**I. FACTUAL BACKGROUND**

For purposes of a Motion to Dismiss, the Court assumes that the facts as stated by the non-movant are correct. This action arises out of an alleged breach of contract claim brought by Plaintiff Narayan Doddapaneni ("Plaintiff") against Defendant Exide Corporation ("Defendant"). Plaintiff alleges that Defendant offered him a contract to serve as an executive of Exide for a period of five years. In reliance on this offer, Plaintiff left a position that he had held for several years in New Mexico to relocate to Pennsylvania. During a series of meetings in Michigan with Exide officials, Plaintiff made it clear that he would only accept the offer if he were given assurances of Defendant's commitment to the program he was to lead, the Lithium

Ion Program (the “Lithium Program”). After receiving such assurances, Plaintiff agreed to accept the offered position on approximately November 11, 1996. Plaintiff was to receive annual compensation of \$150,000, stock options, performances incentives and other benefits from Defendant. Plaintiff began his employment with Exide in Reading, Pennsylvania on January 29, 1997. Plaintiff alleges that during the first six month of 1997, Defendant changed its management philosophy, which resulted in a decreased commitment to the Lithium Program. Eventually, Defendant terminated Plaintiff’s employment on June 20, 1997.

Defendant counterclaims that Plaintiff induced Exide to offer him a position by making several misrepresentations to Defendant. Defendant does not specify what misrepresentations were made beyond stating that Plaintiff claimed ownership of patent that actually belonged to his former employer. Defendant alleges that such misrepresentations, whether fraudulent, negligent or innocent, caused the corporation to offer Plaintiff a position and expend substantial amounts of money and resources.

## **II. LEGAL STANDARD**

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at \*1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia, 868 F.2d. 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant

notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993).

Under Fed. R. Civ. P. 12(c), judgment will not be granted "unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law. See Jablonski v. Pan American Airways, 863 F.2d 889, 890 (3d Cir. 1988). Using a similar standard to that used when reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a Court ruling on motion for judgment on pleadings is required to accept as true all allegations in complaint and all reasonable inferences that can be drawn therefrom, and to view them in light most favorable to nonmoving party. See Prevard v. Fauver, 47 F.Supp. 2d 539 (D. N. J. 1999). Therefore, this Court can not dismiss Defendant's counterclaim unless it appears beyond doubt that the Defendant can prove no set of facts in support of its claim which would entitle it to relief.

### **III. DISCUSSION**

#### **A. Statute of Limitation.**

Plaintiff seeks to dismiss Defendant's counterclaim as time-barred. The Defendant's claims for fraud and negligent misrepresentation are covered by section 5524(7), which provides a two-year statute of limitations. See AAMCO Transmissions v. Harris, 759 F.Supp. 1141, 1144 (E.D. Pa. 1991); Jordan v. Smithkline Beecham, 958 F.Supp. 1012, 1026 (E.D. Pa. 1997). Even the innocent misrepresentation claim would be subject to the two year

limitation. See Dombrowski v. Gould Electronics, 954 F.Supp. 1006, 1010 (M.D. Pa. 1996) (Under Pennsylvania law, any action to recover damages which is founded on intentional, negligent or otherwise tortious conduct must be commenced within two years).

The Counterclaim was filed by Defendant on September 22, 1999. Therefore, if the limitation period were not tolled for any reason, the counterclaims would be time barred if the alleged misrepresentations were made before September 1997. Under any possible scenario, the alleged misrepresentations would have been made before the termination of Plaintiff's employment in June, 1997. The parties agree that all of the discussions that resulted in the employment agreement occurred between September and November, 1996. In any event, the Defendant admits that it discovered the Plaintiff's misrepresentations no later than March 4, 1997, when Plaintiff sent a memo to William Rankin disclaiming ownership of U.S. Patent 5,567,401. Using either March 4 or June 20 as the date of Defendant's discovery of the misrepresentations, the counterclaims would be time barred. Therefore, Defendant's reliance on the "discovery rule" is misplaced.

The Defendant also argues that the limitations period must be tolled for the time period in which Plaintiff Doddapaneni was absent from the Commonwealth of Pennsylvania. 42 Pa.C.S.A. § 5532(a) provides, in relevant part: "[i]f, after a cause of action has accrued against a person, he departs from this Commonwealth and remains continuously absent therefrom for four months or more, ... the time of his absence ... is not part of the time within which the action or proceeding must be commenced." Pursuant to this provision, if an alleged tortfeasor leaves the Commonwealth after the commission of the tort the period spent outside the Commonwealth is excluded from the limitations period. However, under subsection 5532(b)(3), the time is not

excluded "[w]hile jurisdiction over the person of the defendant can be obtained without personal delivery of process to him within this Commonwealth." Since, under the Pennsylvania Long-Arm Statute, jurisdiction over a non-resident defendant can be obtained through service by certified mail, it is contended that any period of time which a plaintiff knows of, or should have known of, the non-resident defendant's mailing address should not be excluded from the limitations period. See Johnson v. Stuenzi, 696 A.2d 237, 239 (Pa. Super. 1997); Bywaters v. Bywaters, 721 F.Supp. 84, 86-87 (E.D. Pa. 1989). The tolling provisions of § 5532 are meant to apply only where the defendant "has escaped location, or is not locatable, despite the exercise of due diligence". Johnson, 696A.2d at 240.

The Defendant Exide has not plead that it made any efforts to serve Plaintiff during the time he was allegedly absent from the Commonwealth. The tolling provision of § 5532 is not intended to be an afterthought for a claimant who has not timely filed her claim. It is meant to protect a claimant who has attempted unsuccessfully to serve a defendant from being prejudiced by the defendant's inaccessibility. Here the Defendant Exide clearly knew the Plaintiff's New Mexico address at the time of his hiring, and that he resided at a temporary address during his employment in Pennsylvania. See Def. Ans. to Compl. ¶ 33. Defendant also admits knowledge of where Plaintiff was between June 1998 and the present. However, there is no mention that the Defendant made any effort to serve the Plaintiff in any forum.

Defendant counters that it was is not necessary to allege that it was unsuccessful in serving process upon Plaintiff because there was never a basis of jurisdiction over Doddapaneni in this Commonwealth. However, under § 5322(a)(4), the Court finds that there was a sufficient basis for jurisdiction. This provision states that jurisdiction can be exercised in this Commonwealth over

a non-resident defendant who causes harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth. The misrepresentations were allegedly made in Michigan or New Mexico and discovered by Exide while Plaintiff was working within the Commonwealth. At least a substantial amount of the harm created by Plaintiff's alleged misrepresentations occurred in Pennsylvania. Additionally, Plaintiff's tenure in Pennsylvania provides the "minimum contacts" necessary to allow the Court's constitutional exercise of personal jurisdiction over him.

#### **IV. CONCLUSION**

Exide could have brought suit against Plaintiff Doddapaneni at anytime since it discovered Plaintiff's alleged misrepresentations, and personal jurisdiction could have been exercised over him in this Commonwealth. It did not bring suit either in Pennsylvania or any other jurisdiction. Since Defendant has not alleged that it attempted unsuccessfully to locate and serve Defendant, it is not entitled to the protections of the tolling statute. Therefore, the allegations of fraud, negligent misrepresentation and innocent misrepresentation made in Defendant Exide's counterclaim are time barred as they were filed outside of the applicable two year statute of limitations. Accordingly, Defendant's counterclaim is dismissed with prejudice.

An appropriate Order follows.

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|                             | : |              |
| EXIDE CORPORATION           | : |              |
|                             | : |              |
| Defendant.                  | : |              |

**ORDER**

AND NOW, this 4th day of January, 2000, upon consideration of the Plaintiff's Motion to Dismiss Defendant's Counterclaim (Docket No. 8), and the Defendant's Response thereto (Docket No. 10), it is hereby **ORDERED** that the Motion is **GRANTED**, and the Defendant's Counterclaim is Dismissed with prejudice.

BY THE COURT:

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RONALD L. BUCKWALTER, J.